IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8558 OF 2005

Mohammed Amin Sikander Abuji
deceased through heirs & LRs.
Smt.Zarine W/o.Zaki Kazi & Ors. .. Petitioners

Versus

Panjrapole Bhiwandi .. Respondent

Mr.P.S.Dani for petitioners

CORAM : S.C.DHARMADHIKARI, J.

DATE : 17th January 2006.

P.C.

. This is a second petition under Article

227 of the Constitution of India by petitioners who are original appellants in Civil Appeal No.332 of 2000. Said Regular Civil Appeal is filed to challenge the decree of trial court dismissing petitioners suit. During the pendency of this appeal, it appears that the original defendant trust which is party respondent was represented by a Manager. It appears that the names of the persons as sole Manager and Vahiwatdar was Dadu Bhai Bhurabhai Barot and ors. Thereafter the successor sole manager was one Mahendra Kumar Oza. Petitioners served the summons/ notice in the appeal on the trust. However, the manager at the relevant time i.e. Mahendra Kumar Oza refused to accept the notice on the ground that his name is not mentioned as manager/ vahiwatdar. He pointed out that if this correction is made, he shall accept the notice and appeal proceedings. Thereupon, petitioners original appellants took out an application for effecting service on Mahendra Kumar Oza and

requested appellate court to issue necessary directions in that behalf. The said application (Exh.47) has been rejected by the impugned order.

2. With the assistance of Mr.Dani, I have perused the order impugned in this petition which is purely procedural and does not prejudice petitioner in any manner, more so, when the lower appellate court has observed that first respondent Panjarapol Bhiwandi is represented by an Advocate who has filed his vakalatnama. Once vakalatnama is on record it is not necessary to again issue summons merely because an attempt was made to serve manager/ vahiwatdar and he refused to accept the papers and proceedings as his name has not been entered in the record. Ultimately, person concerned seeks to represent the trust and in the opinion of the Court below, the trust is represented by an Advocate and the vakalatnama is already on record. It is on that basis the Court has decided to proceed on merits and directed

appellants to argue there appeal on merits. In the opinion of the Court below, the Trust is served and it is not necessary to implead sole manager/ vahiwatdar or serve him in such capacity. Thus there is no impediment for petitioners to proceed and argue their matter on merits. It is for the court below to pass appropriate orders on merits of the appeal and neither the procedural aspect noted by lower appellate court nor its order thereon, would be an impediment in passing appropriate orders which would bind the concerned parties. Petition dismissed. All concerned to act on an authenticated copy of this order.

(S.C.DHARMADHIKARI, J)